



Mackenzie Valley
Environmental Impact
Review Board

MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

In the Matter of: **Environmental Assessment 003-005 the
Paramount Resources Ltd. Cameron Hill Extension**

And In the Matter of: **A Request by the Ka'a'Gee Tu First Nation for the
Chairman of the Mackenzie Valley Environmental
Impact Review Board to step down and not
participate in the Paramount Resources Ltd.
Environmental Assessment**

REASONS FOR DECISION

BACKGROUND:

On December 2nd, 2003, Mr. Alan Landry a Band Councillor and the Oil and Gas Advisor to the Ka'a'Gee Tu First Nation (KTFN) wrote to the Executive Director of the Mackenzie Valley Environmental Impact Review Board (MVEIRB or the Review Board) making a Request pursuant to Rule 44 of the Review Board's *Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings* that the Chairman of the MVEIRB step down and not participate in the Paramount Resources Ltd. (Paramount) Cameron Hills Extension Environmental Assessment (EA 003-005). Mr. Landry alleged that the Chairman of the Review Board had participated in a private meeting with staff of Paramount in the period between late October and early November, during the course of the Paramount EA.

Mr. Landry's letter also cited concerns about the recent removal of a Review Board member indicating that the KTFN felt the Chair was too closely allied with the Minister of Indian Affairs and Northern Development.

Together, the KTFN allege that these incidents provide evidence which can support a reasonable apprehension of bias with respect to the Chairman's continued participation in the Paramount EA.

Upon receipt of Mr. Landry's letter, the Review Board notified the parties to the Paramount EA of the KTFN Request. Other interested parties in the EA were given the opportunity to add any additional evidence they might have about the alleged meeting and make submissions with respect to the KTFN Request. Dates were set for these submissions to the Review Board and for KTFN reply. All documents received were placed on the public record for the EA and were circulated to those parties which indicated an interest in participating in the determination of the KTFN Request.

On December 4th, the Review Board received a letter supporting the KTFN's Request from the Fort Providence Metis Council. On December 8th, 2003, the Review Board received a letter from Ms. Shirley Maaskant the Regulatory and Community Affairs Coordinator of Paramount. Ms. Maaskant was the Paramount employee who is alleged to have met privately with the Chairman. On December 10th, 2003, the Review Board received a letter from the Deh Gah Got'ie First Nation (DGGFN) of Fort Providence which supported the position advanced by the KTFN. On December 12th, 2003, the Review Board received a letter from the Deh Cho First Nations (DCFN) which added its support to the positions advanced by the KTFN and the DGGFN. Finally, on December 12th, 2003 the Review Board received correspondence from Ms. Gillian Calder, Counsel to the KTFN. This letter included legal argument and responses to several questions which the Review Board had asked of Mr. Landry by letter dated December 5th, 2003.

The Review Board met and made its decision on the KTFN Request on December 16th, 2003. The Chairman of the Review Board did not participate in the deliberations or in the decision. The Review Board's decision and reasons for decision are set out below.

THE EVIDENCE:

Mr. Landry's December 2nd letter indicates that a consultant to the KTFN, Mr. Acorn, was informed by Ms. Maaskant of Paramount that she would be in Yellowknife on October 30th and 31st and that she had a meeting set up with Mr. Burlingame to discuss the progress of the Paramount EA in light of early October events at the Review Board, including the decision by the Minister of Indian Affairs and Northern Development to remove a Board member on October 8th. Mr. Landry advises that Mr. Acorn spoke to Ms. Maaskant again in early November and that she advised that she had met with Mr. Burlingame and that she had assurances that the Paramount EA would not be affected by the Board's problems.

Mr. Landry's letter indicates that the KTFN do not know where the meeting took place. It goes on to indicate KTFN concerns about other recent events at the Review Board but the only event cited is the removal of the Board member mentioned above.

The letters submitted by the DGGFN and the DCFN provide no new facts, nor does the letter submitted by the Fort Providence Metis. They simply indicate that they support the position taken by the KTFN.

The December 8th letter submitted by Ms. Maaskant provides details about the events of October 30th and 31st in Yellowknife. She indicates that she travelled there along with other members of the Canadian Association of Petroleum Producers (CAPP) Northern Executive Policy Group and that in this company she attended a Chamber of Commerce luncheon on October 30th and a CAPP breakfast on October 31st. Mr. Burlingame was present at both events but Ms. Maaskant indicates that there was no discussion of the Paramount EA at either event. She does indicate that she spoke to Mr. Burlingame at the luncheon "about recreational activities" and that during the CAPP breakfast Mr. Burlingame indicated that recent changes at the MVEIRB regulatory process timeline was not unduly affected by recent Board changes.

Ms. Maaskant indicates that she did talk to Mr. Acorn on November 3rd, a conversation referred to in Mr. Landry's letter as well. Her recounting of the events of October 30th and 31st differs from that of the KTFN.

The letter from KTFN Counsel confirms that Mr. Landry was not present at the meetings he refers to in his letter and that Mr. Acorn who was the only source of Mr. Landry's information was not present at the meetings attended by Ms. Maaskant and Mr. Burlingame either. The letter from KTFN's Counsel indicates that Mr. Acorn's information was based on what he was told by Ms. Maaskant and by a Review Board staff member who also was not present at the alleged meetings.

THE ISSUE:

Counsel for the KTFN indicates that the only issue to be decided is whether a reasonable apprehension of bias is raised by the facts in this situation. The Review Board agrees.

ANALYSIS:

Counsel for the KTFN submitted that the legal test cited by De Grandpre J. in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at 394 is the appropriate one in this matter:

..." the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the questions

and obtaining thereon the required information. In the words of the Court of Appeal, that test is 'what would an informed person, viewing the matter realistically and practically – and having the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.'"

The Review Board agrees that this is the appropriate test in these circumstances. We note that although the issue of the removal of a Review Board member by the Minister in early October was raised by Mr. Landry, it was not mentioned in Ms. Calder's letter or in any of the letters of support from the DGGFN, the DCFN or the Fort Providence Metis Council. This matter does not appear to have figured in the exchange of information between Ms. Maaskant and Mr. Acorn either. The Minister's actions in respect of Board membership had no relation to the Paramount EA. With the exception of the brief mention of this event in Mr. Landry's letter there is no evidence or argument which relates this Ministerial decision in any way to the allegations of bias on behalf of the Chairman in respect of the Paramount EA.

The Review Board concludes that this information and the Minister's early October actions are irrelevant to the allegations of bias in the Paramount EA.

Counsel for the KTFN notes in her submissions the central importance of a fair and unbiased decision-maker. The law supports the KTFN in this and the Review Board agrees.

The MVEIRB's relationship with the first nations, communities and individuals which participate in its proceedings will depend on the integrity of its process. Co-management brings a unique northern perspective to Review Board proceedings. The Review Board is of the view that within the limits of the law this northern context must be respected. We also feel that the actions of Board members should be examined in this context.

The Chairman of the MVEIRB is the primary spokesperson for the Review Board. Section 13 of the *Mackenzie Valley Resource Management Act* (MVRMA) also makes the Chairman the Board's Chief Executive Officer. The Chairman regularly participates in meetings with government and industry officials as the Review Board's EA business continues. These meetings are essential tasks. The operations of the Board would suffer if the Chairman could not attend these meetings.

The law requires and the Review Board must ensure that the Chairman avoids situations, whether private or public, outside our own proceedings, where any discussion of EA matters before the Board takes place. At the same time, the Review Board's business must go on.

If simply being in the same room as other parties to an EA is sufficient to raise an apprehension of bias, none of our Board members could go to the Post Office in their

community's or participate in community life. Fortunately, the law requires more for an apprehension of bias to be raised.

In this case, we have allegations raised by the KTFN of private meetings between the Chairman and Paramount staff. This evidence and all of the KTFN evidence is hearsay or double hearsay. Although the Review Board is not a Court and can receive such evidence in its proceedings, we note the inherent unreliability of such information. Furthermore, the hearsay advanced by KTFN is denied by the very source cited as the origin of the information, Ms. Maaskant. She says there was no private meeting. She says that the discussions in the Chamber of Commerce luncheon and the CAPP breakfast never included details of the Paramount EA. She says no improper discussions took place.

Who should the Review Board believe? Do we believe Mr. Acorn's recounting of what Ms. Maaskant said, as retold by Mr. Landry or do we believe Ms. Maaskant herself, especially when her story contradicts the facts alleged by Mr. Acorn?

There is no way for the Review Board to be certain which version of these events is the most accurate, but it is clear that eyewitness evidence is preferable to hearsay. In the end, we are not aware of any reason to discount Ms. Maaskant's evidence or her version of what took place.

The Review Board gave all the parties to the Paramount EA the opportunity to put their facts and arguments forward. Counsel to the KTFN suggests that a private meeting took place. The MVEIRB having reviewed all the evidence finds that no such meeting took place. We do find, however, that Mr. Burlingame was present in his official capacity at the Chamber of Commerce luncheon and at the CAPP breakfast.

Considering these facts, would an informed person viewing the matter realistically and practically conclude that Mr. Burlingame would more likely than not, not decide the Paramount EA fairly?

The Review Board has decided that the facts in this situation do not meet the test for a reasonable apprehension of bias. We are not convinced that in the circumstances of this case that the Chairman of the Review Board should step down and not participate in the Paramount EA. The MVEIRB holds that no improper meeting or communication took place between Ms. Maaskant and Mr. Burlingame.

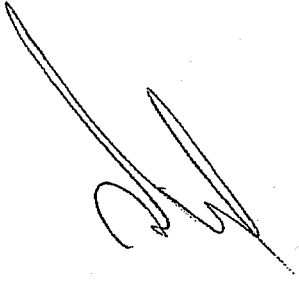
DECISION:

For the reasons outlined above, the Review Board is not convinced that there is a reasonable apprehension of bias with respect to the participation of the Chairman of the MVEIRB in the Paramount EA.

The Request made by the Ka'a'Gee Tu First Nation is denied.

Signed on the 23rd of December 2003 for the

MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD:

A handwritten signature in black ink, appearing to be 'Frank Pope', written over a horizontal line.

**Frank Pope
Vice Chairman**